

proofing of buildings and protection of food supplies against rats and mice still must be carried on. The control of mosquitoes and flies is the control of their breeding not the killing of the mature insects. These are measures which cannot be left to the individual citizen but which must

be carried on as an organized community effort. It is our responsibility as physicians to educate our own communities as to the need for these measures, and our responsibility as citizens to see that they are carried out.

Malpractice Litigation as It Concerns The Dermatologist*

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THERE are two reasons this subject has been chosen for the chairman's address to this 23rd annual session of the section on dermatology and syphilology of the California Medical Association.

One of these reasons is a statement made by Dr. Louis J. Regan at a meeting of section officers of the California Medical Association in January, 1946. He said that if the present rate of malpractice litigation continues each of us will be sued every 11 years. This is a statement of the average and it actually means that some of us will be sued oftener and that a few will not be in court as often as once every 11 years.

The other reason is that your chairman and his associate in practice have just finished a year of irritation and distraction from practice that goes with a malpractice civil suit in preparation for court. There were the long tedious pretrial depositions requiring many visits to the plaintiff lawyers office. There was much apprehension of the unexpected. We could not see where there was merit in the complaint but in spite of reassurance by our attorney we feared that some unseen danger lurked. It seemed there must be some better reason for the complaint than was given, since the plaintiff was willing to risk so much expense in preparing his case when we seemed to have such a good defense. We did much searching of literature references. Finally, there was the 14 days in court during which our office was closed half time. The judge and jury were kind to us and the defendants were completely exonerated.

These reasons, I say, have suggested the subject of malpractice litigation.

Thirty-six dermatologists of Los Angeles County were questioned this year about their personal experience with malpractice claims. Thirty have never had a complaint of malpractice filed against them. Six had been named as defendants in five suits. Seven of the 30 who have never been brought to court have had eight threatened complaints. These never became suits but they are here included in this investigation to give us a

little more information on the sources from which one may expect danger on the matter of alleged malpractice. All malpractice suits and threatened malpractice complaints here considered have occurred in the past ten years.

The five malpractice claims were as follows:

1. A syphilitic patient having a darkfield positive genital ulcer and a negative blood Wassermann reaction was given treatment so that she never developed a positive Wassermann reaction. She later alleged that she had been wrongly diagnosed and wrongly treated for syphilis because she had never developed a positive blood test.

2. A patient who suffered 90 per cent loss of vision from syphilitic optic atrophy had begun losing eyesight during the administration of a long course of tryparsamide. The tryparsamide was used to treat the neurosyphilis which was responsible for the blindness. Twenty-three injections of pentavalent arsenical preparations were given before the patient complained of eye symptoms. Tryparsamide was being given at the time vision disturbances were first experienced. Sixteen weekly 3 gm. injections had been given when the patient first complained of hazy vision. Tryparsamide was immediately discontinued but the patient claimed that her blindness was due to her physician's carelessness.

3. A patient who was successfully treated for acne alleged that the residual acne scars had been produced by over treatment with x-rays.

4. In a successful case of roentgen ray treatment of an epithelioma on the cheek, the eyelids were not actually covered with lead. The x-rays were localized to the lesion by means of a cone. Later, cataracts developed and the patient charged that injury to the eyes by x-rays when they were not covered during treatment of the epithelioma was the cause of the cataracts.

5. A patient having a contact dermatitis was studied by means of patch tests. A positive reaction was obtained from one of the patches. Later a complaint was filed claiming that the entire dermatitis had been produced by the patch tests.

Of the eight threatened complaints which were not followed by actual litigation, four concerned alleged misuse and over-treatment with x-rays. One alleged carelessness in an attempted scar

* Chairman's address. Read before the Section on Dermatology and Syphilology, at the Seventy-fifth Annual Session of the California Medical Association, Los Angeles, May 7-10, 1946.

removal. No guarantee of good results had been given. One patient who was unhappy because he developed increased dermatitis charged that his doctor had given him medicine that produced the bad result. After considerable effort it was shown that the medicine actually responsible for his dermatitis was a sample which he had applied from his own stock on his own responsibility. The last of this series was the case of a patient who had a mole removed and a keloid developed in the headed wound. The patient charged that careless and bunglesome surgery were responsible for the untoward result.

Two of these eight threatened complaints were made by patients to avoid the payment of legitimate fees. These were not unreasonable fees. In one instance the fee had been agreed on before the work was done. In the other the fee was five dollars which was charged for two office treatments.

Twenty-three of the 36 dermatologists interviewed had never been sued nor even threatened with suit. Fourteen of these fortunate physicians have been in practice more than ten years. Three have practiced dermatology more than 25 years. These doctors have our congratulations and sincere good wishes that their good fortune may continue.

It has been noted by Dr. Regan¹ through his close contact with litigation against physicians that malpractice complaints against general practitioners in the field of dermatology and syphilology predominantly include the claims that arsenical preparations of improper dosage or wrong character were administered. Several of these patients have had severe exfoliative dermatitis, and at last one has died. Other claims in this field against the general physician are the over-treatment with some type of light treatment, and the claim of injury due to local applications of a too concentrated character.

It is stated that almost all malpractice claims are instigated by physicians² and this probably is the chief cause of such litigation. There is no denying that the results are deplorable, but when the question is asked, "Why is it that physicians are so prone to criticize their colleagues?" it should be remembered that that reaction on the part of the physicians is only natural and perfectly human.

The criticizing of one by another is a natural human trait and is one not peculiar to physicians, nor can it be explained by the striking individualism of physicians. Who is less individualistic than the barber who dares not open or close his shop to suit his own convenience, but must follow the exact opening and closing time of all other barbers in his vicinity for fear of losing customers.

There is the example of the barber of a large city hotel who gave a guest a hair trim. Later the following day he was again engaged by this same guest to perform other tonsorial service. Upon finishing the service the barber informed the

guest that he really needed a hair trim. "That's peculiar," said the guest, "I just had a hair trim yesterday." At that the barber began to describe the many shortcomings of the barber, whoever he might be, who was responsible for such a haircut. The guest thought that if his hair was so very unsightly he should have it trimmed again and the barber was permitted again to trim his hair. While the second hair trim was in progress the barber insisted that if the poor workman could be found who had previously worked on him he should be made to correct his mistake and carelessness without charge. The guest waited until his hair was trimmed for the second time and then told the barber that it was he, and none other, who was that careless one. The barber lost a fee, but suffered no further damage.

There is a similar ring to the story told by Regan³ of the two physicians who practiced as partners on the outskirts of Los Angeles. They had an equipment to administer x-ray therapy, and employed a technician. A patient presented an eruption on one hand. One of the partners, Dr. A, prescribed a course of x-ray treatments. These were administered by the technician. Several weeks later the patient returned to the office. At this time Dr. A was absent from the city. The patient was sent in to Dr. B who was seeing her for the first time. Without giving the patient an opportunity even to state her name, Dr. B exclaimed: "Good heavens, woman, someone has certainly given you a terrible x-ray burn!" It is said that the punishment fitted the crime this time. Dr. B was equally liable with his partner for the negligence of their employee. Unlike the barber, in this instance there was further financial damage beyond the loss of ordinary professional fees.

Like those of the talkative criticizing barber, the remarks of Dr. B were unnecessary and actually untruthful. The statement of the barber (and of Dr. B) was intended to convince the one being served of his own personal accomplishments and great acumen in being able to locate imperfection quickly. If all careless fault-finders were to suffer similar experiences of self-appointed punishment regularly, the thing known as "the malpractice problem" would quickly end.

It is my observation that dermatologists among many others have learned the lesson intended to be taught by these statements. They have learned that they often see the patient subsequently and have the advantages that go with being in that favorable position of being the last one to see the patient. They also have learned that they may raise themselves by praising the acts of their colleagues. One who has learned well this lesson says to his patient that the other physician is a gentleman or lady, well-trained, careful and capable. What he does not need to say, because it is so eloquently implied, is that he himself is also a fine gentleman because he can recognize those virtues in his fellow physician.

It is the practical application of the principle taught by the Great Physician Himself when He

said, "Everyone that exalteth himself shall be abased, and he that humbleth himself shall be exalted." (Luke 18:14.)

It is obedience to the laws which should govern all human relations. These laws were so grandly summarized by Jesus Christ when He answered his learned questioner on which is *the great commandment*—which is the great law. He said, "Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind. This is the first and great commandment. And the second is like unto it, Thou shalt love thy neighbor as thyself." (Matthew 22:37-39.)

What physician is there who, thinking as much of his neighbor physician as he does of himself, could depreciate his colleague in front of his patient? No, no physician could. Practical Christianity offers a complete solution to the malpractice problem.

REFERENCES

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THE MEASURE OF A MAN

What is it to cease breathing, but to free the breath from its restless tides, that it may rise and expand and seek God unencumbered?—Kahlil Gibran.

The measure of a man is the man himself. Regardless of race or religion he stands alone to receive the judgment of his peers. Judgments of character based on color or on nationality, race or creed, have a foundation as unfirm as quicksand. Every race, every nation, has brought forth saints and sinners, savants and imbeciles, philanthropists and tyrants. Good and evil are curiously blended in us all and the virtues of each must be weighed with his faults. Black or white, Jew, Gentile or Pagan, each is a human being. Be his skin dark or fair, he may be noble or ignoble, learned or untaught, generous or selfish, kind or cruel. Whatever his qualities, he has them, not as the representative of a group, but as a solitary individual who can answer to God and man for his own conduct alone.

Man, a gregarious animal, possesses a strong herd instinct which has been necessary to his security. Individuals who deviate in any noticeable degree from the herd pattern suffer disapproval and discipline to a greater or less degree. Whether the deviation be physical due to race, or mental because of religious or political differences, the majority will either seek to force or absorb the minority into the prevailing pattern, or wreak vengeance upon it. Only a civilization which gives a high sense of social consciousness and responsibility can destroy or modify this tendency, which becomes greater in proportion as minority groups encroach upon the security

and privileges of the majority. Both majority and minority groups in this nation share an awesome responsibility one to another.

The profession of medicine is altruistic and international in its ideals and endeavors. Its universal purpose is the alleviation of human suffering and the betterment of the physical and mental status of humanity in all lands. Physicians, better than others, know that the human mind and body is shaped of the same materials and destroyed by the same diseases whether the skin be white, brown or black. Physicians, then, should lead other men to an equally clear conception of the great truth of human brotherhood. Until this haggard world accepts the belief that all nations can dwell together in friendship and harmony, war and bloodshed will be our common lot.

Our own county medical association, soon to have a membership of more than four thousand highly trained physicians, has never inquired of an applicant for membership concerning his race or religion. If his training and character are sound, it matters not whether he be emigre or Mayflower descendant. Men and women of many races and creeds are and have been active partners in its work. Let us not speak of tolerance, lest it imply the existence of intolerance. Let us continue, in the future as in the past, to set an example of harmonious work and accomplishment, and disregarding nativity and creed, bestow honor and affection upon those who best serve science and the welfare of mankind.—E.T.R., in the *Bulletin* of the Los Angeles County Medical Association.

